

Statement

Insurance Association of Connecticut

Judiciary Committee

March 6, 2009

SB 965, An Act Concerning False Claims

The Insurance Association of Connecticut, IAC, is opposed to SB 965, An Act Concerning False Claims, as it has the potential for misuse, is unnecessary, and is unduly overly broad.

While the concept of a false claims act is unobjectionable, experience in the surety area has shown that such claims are used in an abusive manner. Surety claims on a state project frequently involve differing opinions between contractors and state agencies. As “false” is not defined in the statute, there will be incentive for a state agency to threaten a “false claim” action for these everyday disputes. For example, in California, almost all claims by contractors for payment are met with meritless allegations of violations under the California False Claims Act. Defending such false claims actions adds to litigation costs associated with settling an otherwise good faith dispute. In addition, this directly impacts the surety in the event the surety must perform under the bond and take over the contract.

SB 965 is unnecessary as current Connecticut law already provides sufficient remedies for fraud and misrepresentation. Additionally, there are other contractual remedies available. Connecticut has already reformed the statutory scheme for investigations and hearings, and sanctions for defrauding the state are available.

Finally, SB 965's definition, or lack thereof, of several key terms is very problematic. SB 965 fails to define what a "false" claim is. A good faith dispute may be deemed to be "false". Without a definition an inspector may change and rescind prior approval on various aspects of a project and then claim the impact of the changes violate the False Claims Act. Simple clerical errors that appear on billing statements will become false claims. Additionally, "knowledge" is very broadly defined to include "reckless disregard of the truth or falsity of the information, without regard to whether the person intended to defraud." If the purpose of the act is to deter fraudulent acts, the definition of knowledge should include the intent to defraud. Without such a definition, the simple mistakes become the basis for a "false claim".

For the above stated reasons the IAC urges your rejection of SB 965.